

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

MEDICAL AND MEDICAL-LEGAL INITIAL LIEN FILING FEES

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Court Administrator (as that office is currently vacant pending an appointment by the Governor) and acting pursuant to the authority vested in the Court Administrator by Labor Code Section 4903.05 has adopted a regulation on an emergency basis to implement the provisions of Labor Code Section 4903.05 which took effect on January 1, 2004.

The regulation adopted is Subchapter 1.9 of Chapter 4.5 of Title 8 of the California Code of Regulations, Section 10250. The regulation sets forth the process and manner under which the Court Administrator will collect the \$100 dollar initial lien filing fee required of medical providers and medical-legal lien claimants.

The emergency regulation became effective on January 1, 2004 and will remain in effect for a period of 120 days from January 1, 2004. The purpose of this rulemaking is to adopt the emergency regulation on a permanent basis.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Thursday March 11, 2004

Time: 10:00 a.m.

Place: Auditorium

**The Governor Hiram Johnson State Office Building
455 Golden Gate Avenue
San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Court Administrator by Labor Code Section 4903.05.

Reference is to Labor Code Sections 4903.05 and 5307.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Labor Code Section 4903.05 requires medical providers and medical lien claimants who use the judicial services of the Workers' Compensation Appeals Board to contribute to the funding of the workers' compensation program through the payment of a \$100 filing fee for each initial medical or medical-legal lien filed in a workers' compensation case.

The proposed regulation sets forth the manner and procedure for the collection of the medical provider and medical legal lien claimant initial lien filing fees required by Labor Code Section 4903.05.

The regulation provides the procedures for collection of the filing fee where the lien is filed in writing or in an electronic format; where the lien is filed in a case with no application yet on file; and, where a single lien claimant files liens in multiple cases at the same time.

The regulation informs the regulated public that the Workers' Compensation Appeals Board will not order or enforce payment of any medical treatment or medical-legal lien filed on or after the effective date of the regulation without prior payment of the filing fee required by Labor Code Section 4903.05.

The regulation also informs the regulated public that where the attorney for the employee or dependent or any assignee of the lien claimant files the initial medical or medical-legal lien, that filing shall be deemed to have been made by an agent for the medical provider or medical-legal lien claimant and payment of the filing fee required by Labor Code Section 4903.05 shall be required of the filing party as if the lien had been filed directly by the medical provider or medical-legal lien claimant.

For purposes of clarity, each reference in the emergency regulation to "the effective date of these regulations" is being changed to refer to the actual effective date of the emergency regulation, January 1, 2004.

Finally, a non-substantive change without regulatory effect is being made to correct a typographical error in the emergency regulation. An incorrect Zip Code was given for electronic format lien filers to mail their payments to.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The requirement to pay the filing fee is a statutory mandate. The regulation only provides the procedures to be used for collection of the fee.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.

- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: Every medical provider or medical-legal lien claimant subject to the regulation will have to pay a \$100 filing fee with each initial lien filed. The fee is a statutory mandate. The regulation, however, provides that once a single filing fee is paid, no additional fee will be required in any related case. (The proposed regulation provides that a case will be deemed related if the case alleges injury to the same or substantially same body parts.)

There will be no initial start-up costs to comply with the proposed regulation. The total annual ongoing costs to any medical provider or medical-legal lien claimant will depend on the total number of initial liens filed in any given year.

In addition, Labor Code Section 4603.2, as amended effective January 1, 2004, provides that if any contested amount of a medical or medical-legal billing is determined payable by the Workers' Compensation Appeals board, the defendant shall be ordered to reimburse the provider for any initial lien filing fee paid pursuant to Labor Code Section 4903.05.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: There will be administrative costs to implement the regulation. These costs will be addressed through the normal budget process.
- Local Mandate: None. The proposed regulation will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed regulation does not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed regulation does not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulation does not apply to any local agency or school district.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulation may affect small businesses. The regulation exempts interpreters and copy services from the fee requirement because the Administrative Director determined that in many cases a \$100 filing fee would be grossly disproportionate to the total amount of the lien (often under \$50). Many interpreters and some copy services are either small businesses or sole proprietors.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATION

A pre-adoption workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulation, because the issue addressed is not so complex that it cannot easily be reviewed during the comment period. The Administrative Director, however, held an informal workshop, prior to the emergency adoption of the regulation, with a representative group of interested parties.

In addition, the text of the proposed regulation was made available for pre-adoption public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

As of the date of this notice, the rulemaking file consists of the emergency adoption documents (the Finding of Emergency and Informative Digest and the text of the regulation as adopted, in strikeout/underline format), this Notice, the Initial Statement of Reasons, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and text of regulation may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulation, prior to the public hearing to:

Ms. Marcela Reyes,
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on March 11, 2004. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Administrative Director will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: dwcrules@hq.dir.ca.gov

The Administrative Director will also accept written comments transmitted by facsimile provided they are directed to the attention of Marcela Reyes and sent to the following facsimile number: (415) 703-4720.

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF RULEMAKING FILE AND LOCATION WHERE RULEMAKING FILE MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the "Lien Filing Fees" rulemaking link.

CONTACT PERSON:

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: James M. Robbins, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect at Title 8, California Code of Regulations, Section 10250.

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